

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5662 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

UDESINH S PARMAR

Versus

DY COLLECTOR, ANDND, DIST.KAIRA & ANR.

Appearance:

MR AJ PATEL for Petitioner

MR MUKESH PATEL for Respondent No. 1

None present for Respondent No. 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 08/01/97

ORAL JUDGMENT

Heard learned counsel for the parties.

2. Challenge is made by the petitioner in this Special Civil Application to the order of the respondent No.1 dated 15th May 1984, under which the sale of the land in question made in favour of the petitioner was declared to be ineffective under Section 9(1) of the

Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (hereinafter referred to as the Act, 1947) and the order dated 8th April of the Revenue Department (Appeal), Gujarat State, Ahmedabad, in revision confirming the aforesaid order of respondent No.1.

3. The facts of the case, in brief, are that the petitioner had purchased land bearing Survey No.60, admeasuring 38 Gunthas, situated in the sim of village Rajupura, Taluka Anand, District Kaira, on 7.5.65 for a total consideration of Rs.1,400/- from respondent No.2. Since the date of purchase, the petitioner was cultivating the said land without any hitch or hindrance. The petitioner has come up with the case that after purchase of the said land, he invested considerable amount of money in its development. The respondent No.1 has taken action against the petitioner under the provisions of the Act, 1947, after about 20 years which is wholly unjustified. The land in dispute adjoining the land bearing Survey No.60, i.e. the land purchased by petitioner, bears Survey No.65, belongs to the petitioner himself and the same is contiguous to the aforesaid land. Therefore, the provisions of the Act, 1947, are not attracted to the present case. However, the respondent No.1 has decided the matter against the petitioner under its order dated 15.5.84 and held the transaction in question to be in contravention of the provisions of the Act, 1947. The matter was taken up by the petitioner in appeal wherein on behalf of the petitioner, the very grounds have been reiterated. The appellate authority has dismissed the appeal under the order impugned. hence this Special Civil Application.

4. The learned counsel for the petitioner, Shri A.J. Patel contended that there is an error apparent on the face of the order of the Revenue Department (Appeal), Gujarat State, Ahmedabad, as one of the legal question raised by the petitioner, though has been noticed, but no finding has been given thereon. Carrying further this contention, the learned counsel for the petitioner submitted that the matter deserves to be remanded back.

5. On the other hand, Shri Mukesh Patel, appearing for respondent No.1 contended that the petitioner has failed to produce any evidence showing that he is the owner of the land bearing Survey No.65 and as such, even if this point has not been considered by the Revenue Department (Appeal), Gujarat State, Ahmedabad, the judgment does not vitiate.

6. I have given my thoughtful considerations to the submissions made by the learned counsel for the parties.

7. From para-3 of the order of the Appellate Authority, I find that the learned counsel who appeared for the petitioner has raised contention that the land in dispute adjoining to the land of Survey No.65, admeasuring 3 Acres - 38 Gunthas, is in possession and occupation of the petitioner. Further submission has been made that the respondent No.1 has taken action after about 20 years of the date of sale. The Appellate Authority has not dealt with both the submissions made by the learned counsel for the petitioner before the said authority. The Appellate Authority has proceeded only on the fact that the land being fragment, the sale is affected without obtaining prior permission under the Act, 1947, and therefore is ineffective and invalid. But the other important questions whether after 20 years such action is warranted or not and secondly whether when the petitioner claims himself to be owner and in possession of the adjoining disputed land bearing Survey No.65, the provisions of the Act 1947 are attracted in the present case or not, have to be considered and decided. The matter is different whether the petitioner would have succeeded or not, but once the point has been raised, then it has to be decided one way or the other. Moreso, in case the petitioner is able to establish that he is the owner and in possession of the adjoining land in dispute, then the provisions of the Act, 1947 may not be attracted to the present case. Similarly, the question whether the action initiated after 20 years of sale of the land in question is justified or not is another important question on which the Appellate Authority should have gone into and decided it.

8. In the result, this Special Civil Application succeeds in part. The order of the Appellate Authority dated 8th April 1985, is set aside and the matter is sent back to the Secretary, Appeals, Revenue Department, Government of Gujarat, for deciding the same on merits after hearing the petitioner, or his representative. Rule made absolute in aforesaid terms with no order as to costs.

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